

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Plaintiff,**

**and**

**KATHY C. KOCH,**

**Plaintiff-Intervenor,**

**V.**

## LA WEIGHT LOSS,

**Defendant.**

**Case No. WDQ-02-CV-648**

## MOTION TO STRIKE EXHIBITS

For the reasons set forth below, Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) moves that the Court strike the following exhibits attached to Defendant LA Weight Loss’s (“Defendant”) Memorandum Setting Forth Objections of Defendant LA Weight Loss to Proposed Scheduling Order Filed by EEOC on April 12, 2004:

## 1. Affidavit of Karen Siegel

The Affidavit of Karen Siegel, attached as Exhibit D to Defendant's memorandum objecting to the proposed scheduling order in this case, relies upon information that Defendant has refused to disclose to EEOC in response to discovery requests and has denied is within its possession, custody or control. A party that without substantial justification fails to disclose discoverable information may not use such information as evidence on a motion. See Fed. R. Civ. P. 37(c)(1). Defendant should not be permitted to deny EEOC access to discoverable material and then rely on that same

material in support of its objections.

In Karen Siegel's affidavit, she provides information about rates of pay, commission percentages, earnings, and average income for certain positions for the years 1998 (Baltimore, MD), 1999 (St. Louis, MO), and 2000 (Mifflinburg and State College, PA). Yet, in response to all of Plaintiff EEOC's previous attempts to discover this and similar information, Defendant has repeatedly declined to provide it, instead referring EEOC to limited documents for 2001 and 2002 while denying that it has possession, custody, or control of payroll documents for any periods before 2001 and failing to provide interrogatory answers providing this information. See Exhibit 1 (Defendant's Response to Request No. 2 of Plaintiff's First Set of Requests for Production of Documents, Defendant's Response to Request No. 41 of Plaintiff's Second Set of Requests for Production of Documents, and Defendant's Response to Interrogatory No. 29 of EEOC's Second Set of Interrogatories). Documents upon which Karen Siegel's assertions must be based, and the information in question, are currently the subject of motions to compel discovery. Defendant should not be permitted to support its objections based on information and documents that it has refused to produce and that it has denied having, and in so doing deny Plaintiff EEOC information that could be used to formulate a response or evaluate the accuracy of Karen Siegel's statements.

2. Bruce Bostian's Social Security Number

This Court's Electronic Filing Requirements and Procedures state that it is the responsibility of counsel and the parties to redact full social security numbers from all electronically filed documents. See U.S. District Court for the District of Maryland, Electronic Filing Requirements and Procedures §IV (2<sup>nd</sup> ed. 8/11/2003). Defendant's Exhibit C, Bostian Application and Resume, contains Mr. Bostian's full social security number on his application. The first page of the

application should be stricken.

Respectfully submitted,

/s/

TRACY HUDSON SPICER (Bar No. 08671)

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that Plaintiff EEOC's Motion to Strike Exhibits was filed and served electronically on this day, the 16th day of April 2004. The undersigned further certifies that a copy of each of the aforementioned documents shall be served, via regular mail, upon David Landau, Wolf, Block, Schorr and Solis-Cohen LLP, 1650 Arch St., 22<sup>nd</sup> Floor, Philadelphia, PA 19103, and upon Pamela J. White, Ober, Kaler, Grimes and Shriver, 120 E. Baltimore St., Baltimore, MD 21202, on the 19th day of April 2004.

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/s/

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